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15 IN THE UNITED STATES DISTRICT COURT
16 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
17
18

19 JILLIAN CROCHET,
20 Plaintiff,
21 v.
22 CALIFORNIA COLLEGE OF THE
23 ARTS; STORER TRANSPORTATION
24 SERVICE dba STORER - SAN
25 FRANCISCO; STORER
TRANSPORTATION SERVICE dba
STORER COACHWAYS; MISSION
SMARTSPACE SENIOR LLC dba THE
PANORAMIC; and LATITUDE 38
HOUSING SERVICES LLC dba
URBANESTS,
Defendants.
26

CASE NO.

Civil Rights

**COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES**

- 1. Violation of the Americans with Disabilities Act Title III [42 U.S.C. § 12182(a), *et seq.*]**
- 2. Violation of the Rehab Act of 1973 [29 U.S.C. 794, *et seq.*]**
- 3. Violation of the Fair Housing Act**
- 4. Violation of the Fair Employment and Housing Act**
- 5. Denial of Full and Equal Access [Cal. Civil Code §§ 54, *et seq.*]**
- 6. Violation of the Unruh Act [Cal. Civil Code § 51, *et seq.*]**

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Defendants California College of the Arts and the companies with which it
2 contracts for student housing and shuttle bus services are discriminating against its student,

1 Plaintiff Jillian Crochet and other persons with disabilities. Defendant California College of the
2 Arts failed to construct and maintain safe and accessible facilities as required by federal and
3 State law. It failed to grant reasonable accommodations based on disability. Along with its
4 housing contractor, it fails to provide accessible housing. And along with its student shuttle bus
5 vendor, it fails to provide safe and accessible transportation for Plaintiff and other students with
6 disabilities.

7 2. Despite Plaintiff's many requests to Defendant CCA, Defendants have failed and
8 refused to come into compliance with the laws protecting the civil rights of people with
9 disabilities. Plaintiff has been physically injured as a result of their willful failure to comply.
10 Defendants' illegal behavior continues to this day. Plaintiff therefore brings this lawsuit to
11 enforce her rights. She seeks an order requiring Defendants to make their facilities and services
12 accessible to her and others similarly situated. Plaintiff also seeks damages, attorneys' fees, costs
13 and litigation expenses.

JURISDICTION

16 3. This Court has original jurisdiction of this action under the Americans with
17 Disabilities Act of 1990, 42 U.S.C. §§12101 *et seq.*

18 4. The Judicial District of the United States District Court for the Northern District
19 of California has supplemental jurisdiction over the State law claims alleged in this Complaint
20 pursuant to 28 U.S.C. §1337(a). All the claims derive from a common nucleus of operative facts
21 and arose out of the same transactions. The State law claims are so related to the federal action
22 that they form part of the same case or controversy and the actions would ordinarily be expected
23 to be tried in one judicial proceeding.

VENUE

26 5. Venue in the Judicial District of the United States District Court for the Northern
27 District of California is in accordance with 28 U.S.C. §1391(b) because Plaintiff's claims arose
28 within this Judicial District and the properties that are the subject of this action are located in this

1 District in the Cities of San Francisco and Oakland, California.

2

3

THE PARTIES

4 6. At all times relevant to this Complaint, Plaintiff was a graduate student enrolled at
 5 the California College of the Arts in its Master of Fine Arts program. At all times relevant
 6 Plaintiff was a person with a disability as defined in 42 U.S.C. § 12102 and California
 7 Government Code § 12926(l). She has a rare condition that causes ataxia, loss of sensation in
 8 the arms and legs, vision problems and other symptoms. Her condition affects the following
 9 body systems: Neurological, musculoskeletal, and/or cardiovascular. Plaintiff's condition
 10 substantially limits major life activities, including standing, walking, balancing, lifting and
 11 carrying. Plaintiff cannot perform these activities in the same manner, speed, duration and
 12 stamina as the average person. Moreover, Plaintiff has a history of and/or has been diagnosed
 13 and/or classified as having a physical impairment. Currently she uses a motorized wheelchair or
 14 a walker for mobility, though at times in the past she also has used a cane and an electric
 15 mobility scooter.

16 7. The California College of the Arts (CCA) is a privately-owned and operated,
 17 nonprofit college of art, design, architecture, and writing. It is a California nonprofit public
 18 benefit corporation. It has two campuses in California, one in San Francisco and one in Oakland.
 19 It enrolls approximately 1,500 undergraduates and 500 graduate students annually. Based on
 20 publicly available records Plaintiff is informed and believes and thereupon alleges that CCA
 21 receives federal financial assistance within the meaning of the Rehab Act of 1973, 29 U.S.C.
 22 794, *et seq.*

23 8. Defendant, Storer Transportation Service, a California Corporation is a privately-
 24 owned and operated business, which also does business as Storer – San Francisco and Storer
 25 Coachways. They will be referred to in this Complaint collectively referred to as (“Storer”).
 26 Storer’s website advertises it “has a fleet of motorcoaches with capacities of 54, 45, 21 and 11
 27 passengers. Storer Coachways 45 and 54 passenger motorcoaches are equipped with all the
 28 latest and greatest amenities.” It claims its buses are “meticulously maintained by expert

1 maintenance personnel to ensure your trip is worry free.”

2 9. Defendant CCA is the owner, operator, lessee and/or lessor of the California
3 College of the Arts as a public accommodation, open to the public under the laws of the United
4 States and the State of California. Defendant Storer was and is the owner, operator, lessee and/or
5 lessor of Storer – San Francisco and/or Storer Coachways as a public accommodation, open to
6 the public under the laws of the United States and the State of California.

7 10. Based upon publicly available records including the CCA website, Plaintiff is
8 informed and believes, and thereon alleges, that Defendants CCA and Storer, and each of them
9 were, at all times relevant to the action, the owner, operator, lessor, lessee, franchiser, franchisee,
10 general partner, limited partner, agent, employee, representing partner or joint venturer of each
11 other and were acting within the course and scope of that relationship. Plaintiff is further
12 informed and believes, and thereon alleges, that each of them, including their managing agents
13 and owners, gave consent to, ratified and/or authorized the acts alleged herein to each other.

14 11. Defendant Mission Smartspace Senior LLC, a limited liability company, dba The
15 Panoramic (“Smartspace”) is the owner of the real property known as “The Panoramic
16 Residences”, a residential building located at 1321 Mission St, San Francisco, California.
17 Defendant Latitude 38 Housing Services LLC, a limited liability company, dba Urbanests
18 (“Urbanests”) is the operator of The Panoramic Residences. Together, these two defendants will
19 be referred to as “Latitude 38.” Smartspace, and Urbanests are each a privately-owned and
20 operated business. Each is a limited liability corporation doing business in California. The
21 business of each of them is to provide housing for students and interns and manage housing for
22 colleges and universities. Urbanests is the housing division of Latitude 38. The Latitude 38
23 website states that it both owns properties and “manages the full spectrum of services from
24 administration to coordinating with [schools] and finalizing placement. We save on your
25 [schools’] employment cost and mitigate your legal responsibilities by managing all aspects of
26 your student housing.” <https://www.urbanests.com/property-owners/>, last visited December 4,
27 2019. Its average tenant stays three months to one year. *Id.*

28 ///

1 12. Based upon publicly-available records including its websites and the CCA
 2 website, Plaintiff is informed and believes and thereupon alleges that Defendants CCA,
 3 Smartspace and Latitude 38 are the owners and/or operators, lessor and lessee of The Panoramic
 4 Residences as a public accommodation, open to the public under the laws of the United States
 5 and the State of California. During all times relevant to the Complaint, Defendants CCA,
 6 Smartspace and Latitude 38 operate The Paramount as a business establishment under the laws
 7 of the State of California because they provide goods, services and/or facilities in exchange for
 8 money.

9 13. Based upon publicly available records including the CCA website, Plaintiff is
 10 informed and believes, and thereon alleges, that Defendants CCA, Smartspace and Latitude 38,
 11 and each of them were, at all times relevant to the action, the owner, operator, lessor, lessee,
 12 franchiser, franchisee, general partner, limited partner, agent, employee, representing partner or
 13 joint venturer of each other and were acting within the course and scope of that relationship.
 14 Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein,
 15 including their managing agents and owners, gave consent to, ratified and/or authorized the acts
 16 alleged herein to each other.

17 14. During all times relevant to the Complaint, Defendants CCA, Storer, Smartspace
 18 and Latitude 38, and each of them, operate as a business establishment under the laws of the
 19 State of California because they provide goods, services and/or facilities in exchange for money.
 20
 21

22 FACTS COMMON TO ALL CLAIMS

23 15. Since 2017 Plaintiff has been a student at CCA, in the Master of Fine Arts
 24 program. She lives in a residence hall operated by CCA. She uses CCA facilities on both the
 25 San Francisco and Oakland Campuses and has done so continually since September 2017.
 26 Plaintiff has submitted all the paperwork CCA requires to register as a disabled student.
 27 Defendant CCA has actual knowledge that she has a physical disability that limits her mobility,
 28

1 and that she uses a walker or wheelchair for mobility.

2

3 **CCA DENIED PLAINTIFFS' REASONABLE ACCOMMODATION REQUESTS
FOR HOUSING**

4

5 16. In March 2019, Plaintiff moved into a CCA residence hall, Panoramic
6 Residences. On information and belief, Defendant CCA leases all or part of the building from its
7 owner, Defendant Smartspace, and manager, Defendant Latitude 38, and together they operate it
8 as student housing. According to the CCA website, "Up to 200 CCA students occupy the second
9 through sixth floors exclusively."

10

11 17. CCA offers several housing options at the Panoramic Residences, comprising
12 single- and double-occupancy apartment units at various price points. The double-occupancy
13 units are less-expensive (per student) than the singles. Plaintiff learned that the double rooms
14 may not be wheelchair accessible. She explained to Defendant's Director of Housing that she
15 needed an accessible room and asked whether the double rooms were accessible. The Housing
16 Director replied, "I don't think so." Other administrators later confirmed that the double-
17 occupancy units were not accessible. Therefore, Plaintiff was excluded from choosing a double-
occupancy unit.

18

19 18. Therefore, Plaintiff asked, as a reasonable accommodation of her disability, to be
20 housed in a single room at the per-person double room rate. She provided a letter from her
21 doctor stating she needs an accessible room to accommodate her disability. Defendant CCA
22 denied her request to pay the lower double room rate. A CCA administrator told Plaintiff she
23 had consulted with CCA's lawyer, who said that so long as CCA was charging the lowest single
24 rate, "that is all we have to do." As a result, to date Plaintiff has been charged approximately
25 \$4,000 per year more than she would be in a double room, because the double rooms are not
accessible to her. This extra cost is a source of considerable stress and financial hardship to
26 Plaintiff.

27

28 19. When Plaintiff moved into her residence, she found that she could not control the
ventilation system in her unit, and that very frequently the heat is on, regardless of the outside

1 temperature. Maintenance staff came to her unit but could not correct the issue. Excess heat
2 exacerbates Plaintiff's ataxia, impairing her mobility and balance, causing her pain and fatigue,
3 and interfering with her ability to be a productive student.

4 20. Therefore, Plaintiff made a reasonable accommodation request that Defendant
5 CCA install air conditioning in her unit to counteract the heat, or alternatively to assist her to
6 install a window cooling unit that she purchased. Defendant refused both requests. After a
7 struggle, Plaintiff managed to install the window unit herself, but she has to keep a window open
8 at all times, so she cannot use it during fire season and the rainy season.

LATITUDE 38 FAILED TO PROVIDE ACCESSIBLE FACILITIES IN A BRAND-NEW RESIDENTIAL BUILDING

11 21. The Panoramic Residences is, according the website of Latitude 38, “a brand-new
12 high-rise residence for students and Interns.” <http://www.panoramiclivingsf.com/index.html>, last
13 visited December 4, 2019. Based upon the website and upon publicly-available records Plaintiff
14 is informed and believes that it was built after 1993 when the ADA and Fair Housing Act
15 construction standards went into effect. Plaintiff was informed by a CCA housing administrator,
16 and on that basis believes, that there are no designated disability-accessible double-occupancy
17 units at The Panoramic Residences.

18 Although Plaintiff informed CCA that she needs accessible housing, the unit to which she was
19 assigned lacks accessible features. Defendants CCA and Latitude 38 have not made it
20 accessible. Plaintiff alleges that some parts of the Panoramic Residences qualify as public
21 accommodations within the meaning of the ADA and Disabled Persons Act and that these areas
22 are not constructed and/or maintained as required by the regulations governing public
23 accommodations. Plaintiff is informed and believes, and upon that basis alleges, that the housing
24 and common areas at The Panoramic Residences violate the regulations for accessible
25 construction under federal law, including the Uniform Federal Access Standards promulgated
26 under the Rehab Act of 1973 and applicable to residential housing under the Fair Housing Act,
27 the 2004 Americans with Disabilities Act Accessibility Guideline, and the 1991 Americans with
28 Disabilities Act Accessibility Guidelines for Buildings and Facilities. In addition, they violate

1 State building regulations contained in Title 24, Part 2, Volume 1 of the California Code of
2 Regulations, commonly referred to as the California Building Code (the “CBC”), both Chapter
3 11A (residential facilities) and Chapter 11B (public accommodations).

4

5 **CCA FAILED TO CONSTRUCT, AND TO THIS DAY FAILS TO MAINTAIN,
6 ACCESSIBLE DOORS AND PATHS OF TRAVEL THROUGHOUT ITS FACILITIES**

7 22. Based upon a review of publicly available documents, Plaintiff is informed and
8 believes and thereupon alleges that the San Francisco campus (known now as “the main
9 building” and previously as “the Montgomery campus”) at 1111 – 8th Street was opened for first
10 occupancy in the year 1999. Subsequently, CCA opened the Graduate Center at 184 Hooper
11 Street and the MFA Studios at 2565 - 3rd Street. It also owns and/or operates other gallery space,
12 common use space, and student housing in San Francisco and on the Oakland campus.

13 23. On information and belief, each of these facilities was constructed for first use
14 and/or altered after 1970. Therefore, the facilities were required to comply with construction
15 regulations for disability access which have been in effect since the early 1970’s on both the
16 State and the federal level.

17 24. Most of the paths of travel on both campuses are not accessible to Plaintiff.
18 Doors throughout the campuses are too heavy for her to open. She has measured some of these
19 doors to require an average of more than 20 pounds of force to open. By law, none of them
20 should require more than 15 pounds of opening force, and those which are not fire-rated should
21 not be more than 5 pounds.

22 25. Because the doors are too heavy, Plaintiff struggles to open them, causing her
23 physical pain and potential shoulder and arm injury. Often, she must ask passersby for
24 assistance to open doors, which she finds embarrassing, frustrating and infantilizing. Making
25 such requests draws attention to her disability and reduces her ability to live as an independent
26 member of the community.

27

28

1 26. Many doors also close too quickly. When Plaintiff manages to get a heavy door
2 open, she must swing around it and rush to get through the door before it closes on her back or
3 on her wheelchair.

4 27. Even doors that are paddled with automatic door openers frequently do not
5 function. When they break down Plaintiff again is reduced to struggling with their weight or
6 asking others for assistance. After she complained that the door on the designated accessible
7 restroom in the Hooper building was too heavy, Defendant installed an automatic door opener
8 but later removed it. Plaintiff does not know why.

9 28. Other automated doors swing into the clear door space, in violation of access
10 codes. Plaintiff has to engage the opener on these doors, then hurry out of the way so she isn't
11 struck when they open.

12 29. Since September 2017, Plaintiff has made many, many requests directly to CCA
13 administrators and to facilities staff, to repair and correctly maintain the paddled automatic
14 doors. CCA does not repair the doors timely. Sometimes Plaintiff has had to make multiple
15 requests before a door is repaired. CCA has claimed a door paddle was operational, only to
16 admit later it was not. CCA's failure to construct and maintain its doors in an accessible
17 condition is a policy and practice that is discriminatory. CCA places the onus for identifying
18 broken doors on Plaintiff, causing her ongoing frustration, embarrassment and stress.

19 30. In addition, paths of travel on both campuses contain other barriers to access. For
20 instance, the path of travel that has been designated "accessible" in the brand-new graduate
21 studio facilities (opened in 2018) is indirect, segregated from the main student entrances and
22 difficult to navigate. Barriers include elevators that don't always function, a ramp that lacks
23 clear space for door opening, and paths that are often strewn with accumulated garbage. Many
24 of the doors have doorknobs, which are not accessible hardware and are difficult for her to use.
25 She often resorts to "kicking" the doors open with her wheelchair kickplates which is damaging
26 to the chair but is her only option when there is no one present to help her. In March 2019 her
27 doctor wrote a letter to CCA asking them to install more automatic doors and lever-style handles,
28 but Defendant has not done so.

1 31. This segregated, difficult path of travel marks Plaintiff as “other” based on her
2 disability. There are some parts of both campuses, including studio space, that Plaintiff cannot
3 even enter because doors are too narrow, paths are impeded, and/or the only point of access is
4 stairs. Thus, she cannot participate in common curricular and extra-curricular activities such as
5 visiting these areas of the studio to observe art being made by fellow students. Her inability to
6 participate in these activities impairs her education and again calls attention to her disability,
7 highlighting her difference from her cohort.

8 32. These conditions constitute deviations from the most basic disability access
9 standards under federal law, including the Uniform Federal Access Standards promulgated under
10 the Rehab Act of 1973, the 2004 Americans with Disabilities Act Accessibility Guidelines, and
11 the 1991 Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities.
12 In addition, they fail to conform with State building regulations contained in Title 24, Part 2,
13 Volume 1 of the California Code of Regulations, commonly referred to as the California
14 Building Code (the “CBC”). Plaintiff is informed and believes, and upon that basis alleges, that
15 these and other elements on both the San Francisco and Oakland campuses violate the
16 regulations for accessible construction.

CCA AND STORER FAIL TO PROVIDE ACCESSIBLE SHUTTLE SERVICES, CAUSING PLAINTIFF PHYSICAL INJURY

20 33. Defendant CCA operates a shuttle service for students, staff and faculty. Based
21 upon Defendant CCA's website, Plaintiff is informed and believes and thereupon alleges that at
22 all times relevant to this Complaint, Defendant CCA has a contract with Defendant Storer, which
23 provides large, Greyhound-style buses for the shuttle and employs the drivers.

24 34. The shuttle operates between the Oakland and San Francisco campuses, stopping
25 at several San Francisco campus locations. The shuttle is available to all students at no out-of-
26 pocket cost. It runs on a fixed daily schedule, which is posted on Defendant CCA's website.
27 Able-bodied students may take the shuttle simply by hopping on or off at any stop. But not all

1 the shuttle buses provide accessibility lifts. If Plaintiff wants to use the shuttle, each semester
 2 she has to contact Storer herself to inform itof the specific days and times she will use the bus.
 3 Storer will commit to providing an accessible bus only on those routes. If she wants to change
 4 her schedule, she must provide Storer at least 24 hours' notice. Thus, a schedule is imposed
 5 upon her that is not imposed on any able-bodied student. Unlike her able-bodied cohort, she can
 6 never change her mind at the last minute, behave spontaneously, or schedule (or attend) last-
 7 minute meetings or events.

8 35. Despite complying with this discriminatory, unequal requirement to plan her use
 9 of the shuttle service in advance, Plaintiff still cannot rely upon having an accessible shuttle.
 10 Since September 2017, Plaintiff has experienced shuttle buses that show up without lifts or
 11 ramps or whose equipment is broken. One was held in place with duct tape. Drivers have been
 12 unable or unwilling to operate the wheelchair lift and have requested that she get out of her
 13 wheelchair and climb onto the bus herself while they store her chair underneath the bus, because
 14 "you can walk."

15 36. At other times drivers have refused to tie down her wheelchair with straps as
 16 required by law, leading her chair to tip over inside the bus when it turned a corner. Plaintiff has
 17 been physically injured more than once.

18 37. More than one time, the bus has been delayed over an hour while a driver
 19 struggled with the lift and the other CCA students stood around and stared, becoming more and
 20 more frustrated. Though the CCA students have always been kind, Plaintiff is humiliated each
 21 time it happens. She knows she is not the cause of the problem, yet she also knows that but for
 22 her presence, the other students' lives would not be interrupted.

23 38. Defendants CCA and Storer are on actual, written notice of these problems and
 24 have been since 2017. Plaintiff has expressly informed CCA that its shuttle service is not
 25 equally accessible to her and has made requests for reasonable modification of the shuttle service
 26 policies, practices and procedures. CCA has communicated to Storer Plaintiff's complaints and
 27 her request for reasonable modifications of Storer's policies, practices and procedures.
 28 Defendants, and each of them, have denied these requests. Storer has more than once promised

it would check the function of each accessible bus before leaving the yard, but yet the lifts frequently fail to function – or the drivers are not trained to use them. A CCA administrator has witnessed at least one instance when an accessible shuttle did not arrive as Storer had promised.

39. Plaintiff has spent hours emailing Defendant CCA, continually notifying that a problem happened again. The problems continue to this day.

**PLAINTIFF HAS NO CHOICE BUT TO CONTINUE STRUGGLING UNDER
THESE CONDITIONS UNTIL CCA AND STORER CEASE THEIR
INTENTIONALLY DISCRIMINATORY POLICIES AND PRACTICES**

9 40. Plaintiff is trapped in this pervasively discriminatory milieu. She has done
10 everything she can, over the course of two years, to inform Defendant CCA of the various
11 problems, to compromise and to cooperate. So long as she is a student at CCA she will continue
12 to face these experiences. She is not willing to withdraw from graduate school in order to avoid
13 them, nor should she be expected to do so. However, there are many times when Plaintiff is
14 deterred from going onto campus or taking the shuttle because she does not feel physically or
15 emotionally strong enough to tackle the many barriers that she knows she will encounter.

16 41. Ironically, Defendants hold themselves out as accessible and welcoming to people
17 with disabilities. Defendant CCA touts its accessibility on many pages of its website. It has
18 used Plaintiff's photograph on its website. It represents to the public that Plaintiff is part of the
19 "Community" while, by their refusal to address her concerns, deliberately excluding her.
20 Defendant Storer's website claims it is a "pioneer" in the transportation of people with
21 disabilities and as a paratransit operator. <https://storercoachways.com/about-us/> (last visited
22 November 20, 2019). Defendant Latitude 38, on its Corporate Social Responsibility webpage,
23 states that it supports the Children's Cerebral Palsy movement to "improve quality of life and
24 future outcomes" and "reshap[e] our culture." <https://www.urbanests.com/csr/>, last visited
25 December 4, 2019.

26 42. All Defendants are established, sophisticated corporate entities that trade upon the
27 image of disabled persons to establish their *bona fides* and sell their services. For these reasons
28 and others, Plaintiff is informed and believes and thereupon alleges that Defendants, and each of

1 them, are familiar with the disability access requirements that apply to their facilities and have
 2 applied for decades. Based upon the fact that Defendants must have been aware of their
 3 obligations to their disabled patrons, yet built and allowed the physical and policy barriers to
 4 access to remain since the facilities opened, Plaintiff alleges that Defendants' behavior is
 5 intentional: They maintain discriminatory facilities and policies and practices of failing to
 6 maintain accessible features, in conscious disregard of the civil rights of Plaintiff and others
 7 similarly situated.

8

FIRST CLAIM
As to All Defendants
(Violation of the Americans with Disabilities Act of 1990)

11 43. Based on the facts and allegations pled in this Complaint (which Plaintiff re-
 12 pleads and incorporates herein by reference), Plaintiff was denied full and equal enjoyment of
 13 and access to Defendants' goods, services, facilities, privileges, advantages or accommodations
 14 in violation of the ADA. Each Defendant owns, leases and/or operates a public accommodation
 15 as defined in 42 U.S.C. section 12181(7). The condition of Defendants' facilities and/or the
 16 manner in which Defendants provided goods and services fail to provide full and equal access to
 17 Defendants' goods and services in public accommodations as required generally by the
 18 provisions of 42 U.S.C. sections 12182(a) and 12182(b)(1)(A). As set forth in this Complaint,
 19 Plaintiff has been specifically subjected to discrimination in violation of 42 U.S.C. sections
 20 12182(b)(2)(A)(iii); 12182(b)(2)(A)(iv); 12182(b)(2)(A)(v); 12183 and 12188 because Plaintiff
 21 is denied equal access to and enjoyment of the CCA campus, the public accommodation areas of
 22 her housing, the shuttle bus service and the buses themselves.

23 **Physical Barriers to Access**

24 44. Defendant CCA has failed to remove architectural barriers to access on both
 25 campuses. The ADA prohibits, in pertinent part: "A failure to remove architectural barriers . . .
 26 that are structural in nature, in existing facilities . . . where such removal is readily achievable."
 27 42 U.S.C. § 12182(b)(2)(A)(iv).

28 45. Plaintiff alleges that the removal of each of the specific barriers that Plaintiff

1 encountered as set forth above, was at all times, “readily achievable” pursuant to the factors set
 2 forth in the ADA and the applicable regulations adopted by the United States Department of
 3 Justice under the ADA (said regulations being set forth in 28 CFR Part 36). Further, assuming
 4 *arguendo* that Defendants were able to meet their burden of production and of proof that the
 5 removal of the defined architectural barriers (or any of them) was or is not “readily achievable,”
 6 Defendant CCA has failed conspicuously to make its goods, services, facilities, privileges,
 7 advantages and/or accommodations available through alternative readily achievable methods
 8 pursuant to the requirements of 42 U.S.C. section 12182(b)(2)(A)(v). Additionally, Defendant
 9 CCA has conspicuously failed to obey the provisions of section 28 CFR §36.211 that require
 10 public accommodations to maintain features that are required to be accessible.

11 46. The ADA specifically prohibits discrimination against persons with disabilities in
 12 the construction and alteration of public accommodations. Most of the CCA campus and the
 13 student housing, are public accommodations. 42 U.S.C. section 12183(a)(1) states that a failure
 14 to design and construct covered public accommodation buildings and facilities that are readily
 15 accessible to and useable by people with disabilities, as required by the ADA and the regulation
 16 enacted thereunder in 28 C.F.R. Part 36, is discriminatory and violates the ADA.

17 47. Based upon a public records search, Plaintiff is informed and believes and based
 18 thereon alleges that many parts of the CCA campus, and The Panoramic Residences student
 19 housing, were designed for first occupancy on or after January 26, 1993, and that as to the pre-
 20 existing facilities, Defendant CCA has modified and altered them on or after January 26, 1993, in
 21 a manner that affects the usability and accessibility of these facilities.

22 48. 42 U.S.C. section 12183(a)(2) prohibits:

23 (2) with respect to a facility or part thereof that is altered by, on behalf of,
 24 or for the use of an establishment in a manner that affects or could affect the
 25 usability of the facility or part thereof, a failure to make alterations in such a manner
 26 that, to the maximum extent feasible, the altered portions of the facility are readily
 27 accessible to and usable by individuals with disabilities, including individuals who
 28 use wheelchairs. Where the entity is undertaking an alteration that affects or could
 affect usability of or access to an area of the facility containing a primary function,
 the entity shall also make the alterations in such a manner that, to the maximum
 extent feasible, the path of travel to the altered area and the bathrooms, telephones,
 and drinking fountains serving the altered area, are readily accessible to and usable
 by individuals with disabilities where such alterations to the path of travel or the

bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

Sections 36.402 and 36.403 of 28 C.F.R. Part 36 contain the regulations called for and referenced in 42 U.S.C. section 12183(a)(2). As enforceable at the time of the incidents alleged herein, section 36.402 of 28 C.F.R. Part 36 states, in pertinent part:

(a) General.

(1) Any alteration to a place of public accommodation or a commercial facility, after January 26, 1992, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) An alteration is deemed to be undertaken after January 26, 1992, if the physical alteration of the property begins after that date.

(b) Alteration. For the purposes of this part, an alteration is a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part thereof.

(1) Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions...

(2) If existing elements, spaces, or common areas are altered, then each such altered element, space, or area shall comply with the applicable provisions of appendix A to this part.

Section 36.403(a) of 28 C.F.R. Part 36 requires additional “path of travel” accessibility work to be conducted in connection with certain alterations. That section, as enforceable at the time of the incidents alleged herein states, in pertinent part:

(a) General. An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

Section 36.403(e) defines a path of travel as follows:

(e) Path of Travel.

(1) A 'path of travel' includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including

sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.

(2) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.

(3) For the purposes of this part, the term 'path of travel' also includes the restrooms, telephones, and drinking fountains serving the altered area.

49. Student housing is covered by the ADA. 28 C.F.R. § 36.406(e). Defendants CCA and Latitude 38, and each of them, is a provider of student housing under the ADA. Each of them is in violation of the ADA Guidelines and the ADA Accessibility Standards with regards to The Panoramic Residences. On information and belief, CCA also is in violation of the ADA Guidelines and the ADA Accessibility Standards with regards to its other student housing.

50. Other access barriers may exist at both campuses. Plaintiff will seek leave to amend this Complaint after a site survey of the premises by an access consultant, pursuant to the holding of the Ninth Circuit Court of Appeals in *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034 (9th Cir. 2008).

Failure to make Reasonable Modifications in policies, practices and procedures

51. In addition, Defendants have failed 42 U.S.C. section 12182(b)(2)(A)(ii) “to make reasonable modifications in policies, practices and procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities.” Based on the facts and allegations pled herein, despite Plaintiff’s requests Defendants failed and refused to modify their policies, practices and procedures in that they failed to have a scheme, plan or design to assist Plaintiff and/or others similarly situated in enjoying and utilizing Defendants’ services, facilities, privileges, advantages or accommodations, as required by the ADA. Additionally, Defendants conspicuously failed to adopt required policies and procedures to allow people with disabilities to navigate the campus, and the shuttle effectively.

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Failure to provide accessible shuttle services

52. Defendant Storer has violated the ADA's stricture that "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce." 42 U.S.C.A. § 12184. "Discrimination" under this section includes but is not limited to the following:

- “the failure of such entity to—
 - (A) make reasonable modifications consistent with those required under section 12182(b)(2)(A)(ii) of this title;
 - (B) provide auxiliary aids and services consistent with the requirements of section 12182(b)(2)(A)(iii) of this title; and
 - (C) remove barriers consistent with the requirements of section 12182(b)(2)(A) of this title and with the requirements of section 12183(a)(2) of this title”;
 - “the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title”; and
 - “any other failure of such entity to comply with such regulations.”

42 U.S.C.A. § 12184(b)(2)-(4). An “over the road bus” means “a bus characterized by an elevated passenger deck located over a baggage compartment.” 42 U.S.C.A. § 12181. Over-the-road buses purchased and/or lease pursuant to the regulations pursuant to section 12186(a)(2) must be “readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.” 49 C.F.R. § 37.103.

53. Defendant Storer is a private entity that is primarily engaged in the business of transporting people for profit and has engaged in a contract to transport people on behalf of Defendant CCA. Its operations affect commerce. The buses it uses to transport CCA students have an elevated passenger deck located over a baggage compartment. It operates a fixed route system as defined in 49 C.F.R. § 37.3.

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1 54. Defendant Storer advertises that it operates approximately 350 vehicles and has
 2 over 500 employees. It serves the entire Northern California region. In 2016 it received an
 3 award from United Motorcoach Association in the “Large Operator Category.” Based on those
 4 facts, Plaintiff is informed and believes and thereupon alleges that Defendant is a Large Operator
 5 and a Class I motor carrier as defined by 49 C.F.R. § 37.3

6 55. On the basis that it has been more than 26 years since these requirements went
 7 into effect, and more than 19 years since the requirement for accessible vehicles went into effect;
 8 and that the over-the-road buses Defendant Storer has provided for use as the CCA shuttle
 9 appear fairly new and in good condition, Plaintiff, is informed and believe that Defendant Storer
 10 has purchased and/or leased its buses since 2000. Defendant Storer has purchased these buses,
 11 and uses them for the shuttle, without complying with the regulations issued under 42 U.S.C.
 12 section 12186(a)(2) and without ensuring they are “readily accessible to and usable by
 13 individuals with disabilities, including individuals who use wheelchairs.” 49 C.F.R. § 37.103.

14 56. In requiring that Plaintiff and other persons with mobility disabilities identify in
 15 advance what routes and times they want to use the shuttle, and notify Defendant Storer 24 hours
 16 in advance of any changes, at all times relevant to this Complaint Defendant Storer has failed to
 17 provide Plaintiff services equivalent to the service provided able-bodied rider with respect to
 18 schedule, geographic area of service and hours and days of service.

19 57. Moreover, Defendant Storer has violated other regulations promulgated under
 20 section 12186, including:

- 21 • Failing to “ensure that personnel are trained to proficiency, as appropriate to their duties,
 22 so that they operate vehicles and equipment safely and properly assist and treat
 23 individuals with disabilities who use the service in a respectful and courteous way, with
 24 appropriate attention to the difference among individuals with disabilities.” 49 C.F.R. §
 25 37.173. “Training to proficiency” also includes, “training in proper operation and
 26 maintenance of accessibility features and equipment, boarding assistance, securement of
 27 mobility aids, sensitive and appropriate interaction with passengers with disabilities,
 28 handling and storage of mobility devices, and familiarity with the requirements of this

1 subpart.” 49 C.F.R. § 37.209.

- 2 • Failing to maintain the accessible features of its buses. 49 C.F.R. § 37.161.
- 3 • Failing to use wheelchair securement systems, failing to assist individuals with
- 4 disabilities with the use of securement systems, ramps and lifts, and requiring individuals
- 5 to transfer out of their wheelchairs. 49 C.F.R. § 37.165.
- 6 • Failing to ensure personnel make use of accessibility-related equipment or features
- 7 required by the regulations and failing to make available to individuals with disabilities
- 8 adequate information concerning transportation services. 49 C.F.R. § 37.167.
- 9 • Failure to ensure that by October 29, 2012, 100 percent of its buses were accessible to
- 10 people using wheelchairs. 49 C.F.R. § 37.185.

11 Each of the violations of these regulations is a separate violation of 42 U.S.C.A. §
 12 12184(b)(4)(B).

13 58. Defendant Storer also is in violation of the general anti-discrimination provisions
 14 of the ADA. Its failure to provide accessible buses or to modify its policies and practices denied
 15 Plaintiff the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or
 16 accommodations of the shuttle service and of its buses. 42 U.S.C.A. § 12182(a). It provided
 17 Plaintiff, and all similarly situated persons, an unequal benefit. 42 U.S.C.A. § 12182(b). It
 18 utilizes standards or criteria or methods of administration that have the effect of discriminating
 19 on the basis of disability. 42 U.S.C.A. § 12182(b). It fails to make reasonable modifications in
 20 policies, practices, or procedures, when such modifications are necessary to afford such goods,
 21 services, facilities, privileges, advantages, or accommodations to individuals with disabilities.
 22 *Id.* at 12182(b)(2)(ii). It fails to take such steps as may be necessary to ensure that no individual
 23 with a disability is excluded, denied services, segregated or otherwise treated differently than
 24 other individuals because of the absence of auxiliary aids and services. *Id.* at 12182(b)(2)(iii).

25 59. Defendant Storer failed to remove transportation barriers in its existing vehicles
 26 where such removal is readily achievable and failed to make such services, facilities, privileges,
 27 advantages, or accommodations available through alternative methods. *Id.* at 12182(b)(2)(iv)-(v).
 28 Based on its sized and resources as previously alleged herein, Plaintiff is informed and believes

1 and thereupon alleges that it is readily achievable for Defendant Store remove such barriers and
 2 provide its services, facilities, privileges, advantages, or accommodations available through
 3 alternative methods.

4 60. Defendant CCA is required to comply with the requirements pertaining to
 5 vehicles and transportation systems in the regulations issued by the Secretary of Transportation
 6 pursuant to section 306 of the Act. 28 C.F.R. § 36.310(c).

7 61. As a “public accommodation that provides transportation services, but that is not
 8 primarily engaged in the business of transporting people” Defendant CCA is subject to both the
 9 Department of Justice regulations and transportation regulations promulgated by the Department
 10 of Transportation under the ADA. 28 C.F.R. § 36.310(a)(1), (c); 49 C.F.R. § 37.21(a)(3), (c).
 11 These regulations apply specifically to private colleges providing transportation services. 28
 12 C.F.R. § 36.310(a)(2); 49 C.F.R. § 37.25.

13 62. Defendant CCA operates a fixed-route transportation system under contract with
 14 Storer Transportation. <https://portal.cca.edu/essentials/transportation/cca-intercampus-shuttle/>,
 15 last visited February 5, 2020. “Operates includes, with respect to a fixed route or demand
 16 responsive system, the provision of transportation service by a public or private entity itself or by
 17 a person under a contractual or other arrangement or relationship with the entity.” 49 C.F.R. §
 18 37.3. Its shuttle service is a “fixed-route transportation system,” meaning “a system of
 19 transporting individuals (other than by aircraft), including . . . the provision of transportation
 20 service by private entities . . . on which a vehicle is operated along a prescribed route according to
 21 a fixed schedule.” 49 C.F.R. § 37.3. CCA uses over-the-road style buses, meaning “a bus
 22 characterized by an elevated passenger deck located over a baggage compartment.” *Id.*
 23 Therefore, CCA is subject to subsection (b)(2)(D) of 42 U.S.C. § 12182:

24 For purposes of subsection (a), discrimination includes (I) the purchase or lease of
 25 an over-the-road bus which does not comply with the regulations issued under
 26 section 12186(a)(2) of this title by a private entity which provides transportation of
 27 individuals and which is not primarily engaged in the business of transporting
 28 people, and (II) any other failure of such entity to comply with such regulations.

1 63. Therefore, CCA is required to lease over-the-road buses that comply with both 49
 2 C.F.R. § 38.23 and part 38 subpart G. 49 C.F.R. § 37.7(c). Section 38.23 requires, “All vehicles
 3 covered by this subpart shall provide a level-change mechanism or boarding device (e.g., lift or
 4 ramp) . . . and sufficient clearances to permit a wheelchair or other mobility aid user to reach a
 5 securement location [inside the bus].” 49 C.F.R. § 38.23(a). Part 38 subpart G reiterates the
 6 requirement to provide a wheelchair lift on each bus. 49 C.F.R. § 38.159(a)(1).

7 64. In short, CCA’s shuttle service must, as a matter of law, make all of its buses’
 8 wheelchair accessible, not require her to request them *ad hoc*. Because CCA does not provide
 9 wheelchair lifts on all its buses, it violates the ADA.

10 65. As a public accommodation that operates a shuttle service, it also is subject to the
 11 general anti-discrimination provisions of the ADA. 42 U.S.C. § 12184(b)(2). Violations of the
 12 general anti-discriminations provide a separate and distinct basis for failure to provide full and
 13 equal access to the shuttle service.

14 66. Defendant CCA operates its shuttle system on a contract with Defendant Storer.
 15 The ADA explicitly prohibits covered entities such as Defendant “directly, or through
 16 contractual, licensing, or other arrangements,” engaging in actions otherwise prohibited by title
 17 III. 42 U.S.C. § 12182(b)(1)(A)(i); 49 C.F.R. § 37.3. As an operator of the shuttle service,
 18 Defendant CCA is liable on its own account for violations of the regulations pertinent to it as a
 19 shuttle operator, and also jointly and severally liable for Defendant Storer’s violations as
 20 described above.

21 67. Based on the facts and allegations herein, Plaintiff has been damaged and will
 22 suffer irreparable harm unless Defendants are ordered to discontinue business at CCA and its
 23 facilities, and to cease business as a shuttle service or: (i) remove architectural and other barriers
 24 and otherwise obey the requirements of the ADA, and (ii) adopt policies and procedures that
 25 comport with the requirements of the ADA with respect to the enjoyment of the facilities by
 26 persons with disabilities.

27 68. Plaintiff alleges that Defendants’ discriminatory conduct is capable of repetition,
 28 and this discriminatory repetition adversely impacts Plaintiff and a substantial segment of the

1 disability community. Plaintiff alleges there is a national public interest in requiring accessibility
 2 in places of public accommodation. Plaintiff has no adequate remedy at law to redress the
 3 discriminatory conduct of Defendants. Plaintiff desires to fully-utilize Defendants' goods and
 4 services but is deterred from doing so fully because of the barriers set forth herein. Accordingly,
 5 Plaintiff alleges that a prohibitory or mandatory injunction is necessary to assure that Defendants
 6 comply with the applicable requirements of the ADA.

7 **Failure to Provide Accessible Student Housing**

8 69. Defendant CCA is a public accommodation because it is a “undergraduate, or
 9 postgraduate private school, or other place of education.” 42 U.S.C.A. § 12181. Its dorms also
 10 are public accommodations as “housing at a place of education” which means “housing operated
 11 by or on behalf of an elementary, secondary, undergraduate, or postgraduate school, or other
 12 place of education, including dormitories, suites, apartments, or other places of residence.” 28
 13 C.F.R. § 36.104.

14 70. Accessible graduate student housing must be provided at a variety of price points
 15 so that students with disabilities have the same variety of choice as other students. “Apartments
 16 or townhouse facilities that are provided by or on behalf of a place of education, which are leased
 17 on a year-round basis exclusively to graduate students or faculty and do not contain any public
 18 use or common use areas available for educational programming, . . . shall comply with the
 19 requirements for residential facilities in sections 233 and 809 of the 2010 Standards.” 28 C.F.R.
 20 § 36.406(e), 28 CFR 35.151(f). ADAS standard 233.3.5 states, “Dispersion. Residential
 21 dwelling units required to provide mobility features . . . shall be dispersed among the various
 22 types of residential dwelling units in the facility and shall provide choices of residential dwelling
 23 units comparable to, and integrated with, those available to other residents.”

24 71. Defendant told Plaintiff that it did not have any accessible housing at the lower
 25 price point for double-occupancy. It admitted a violation of ADAS and therefore of the ADA.

26 72. Defendant CCA violated the ADA in a second fashion when it refused Plaintiff’s
 27 request that in the absence of accessible double-occupancy housing, she be provided a single
 28 room at the double room price. “A public accommodation shall make reasonable modifications

1 in policies, practices, or procedures, when the modifications are necessary to afford goods,
2 services, facilities, privileges, advantages, or accommodations to individuals with disabilities,
3 unless the public accommodation can demonstrate that making the modifications would
4 fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or
5 accommodations.” 28 C.F.R. § 36.302. Here, the only rooms that were accessible are single
6 rooms. Defendant has the obligation to modify its pricing policy to provide pricing choice, as
7 required by ADAAS 233.3.5.

WHEREFORE, Plaintiff requests relief as outlined below.

SECOND CLAIM
As to Defendant California College of the Arts Only
(Violation of the Rehab Act of 1973, 29 U.S.C. 794, et seq.)

13 73. Based on the facts and allegations pled in this Complaint (which Plaintiff re-pleads
14 and incorporates herein by reference), Plaintiff has been and continues to be excluded from the
15 participation in, be denied the benefits of, or be subjected to discrimination by CCA, a program
16 receiving Federal financial assistance. Section 504 of the Rehabilitation Act of 1973 provides in
17 relevant part: “[N]o otherwise qualified individual with a disability shall, solely by reason of her
18 or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to
19 discrimination under any program or activity receiving federal financial assistance” 29 U.S.C. §
20 794; 24 C.F.R. § 8.4(a). Such programs and activities are prohibited from discriminating against
21 qualified individuals with disabilities because a “recipient’s facilities are inaccessible to or
22 unusable by individuals with handicaps.” *see* 24 C.F.R. § 8.20.

23 74. Upon information and belief, at all times relevant to this action, Defendant CCA
24 was a recipient of federal funding within the meaning of Section 504 of the Rehabilitation Act
25 (“Section 504”).

26 75. As a recipient of federal funds, Defendant CCA must operate its facilities so that
27 the program or activity, when viewed in its entirety, is readily accessible to and usable by
28 individuals with disabilities. 24 C.F.R. § 8.24. This includes compliance with the Uniform

1 Federal Accessibility Standards (UFAS) and maintenance of accessible features. 24 C.F.R. § 8.32.

2 76. Plaintiff is a qualified individual with a disability within the meaning of Section
3 504 and is “otherwise qualified” to participate in Defendant’s program, *i.e.*, to attend school and
4 be a tenant of Defendant CCA.

5 77. Defendant CCA has intentionally violated Section 504 by discriminating against
6 disabled persons, including Plaintiff by, among other things:

- 7 a. Failing to grant reasonable accommodation requests;
- 8 b. Failing to implement lawful reasonable accommodation policies;
- 9 c. Failing to make their premises accessible to and usable by students with
10 disabilities;
- 11 d. Failing or delaying maintenance and repairs of accessible features on both
12 campuses;
- 13 e. Failing to ensure that Plaintiffs and others similarly situated have equal access
14 to campus housing;
- 15 f. Failing to comply with Uniform Federal Accessibility Standards, including but
16 not limited to Section 4, Accessible Elements and Spaces.

17 78. By their policy and practice of discriminating against and failing to reasonably
18 accommodate students and others with mobility disabilities, Defendants violate section 504 of the
19 Rehabilitation Act. 29 U.S.C. § 794.

20 79. Defendant’s stubborn refusal to provide Plaintiff and other disabled students with
21 accessible paths of travel, access to common area amenities and to accessible student housing,
22 particularly when on actual notice of the ongoing problems, demonstrates a knowing and
23 conscious disregard for the law in general and the rights of disabled students in particular. Such
24 conduct justifies an award of punitive and exemplary damages in addition to all other relief
25 sought.

26 80. As a result of Defendant’s acts and omissions, Plaintiff suffered actual harms and
27 losses including but not limited to physical injuries and embarrassment, humiliation, degradation
28 and emotional distress because of the discrimination that she experienced and other unlawful acts

of Defendants.

81. Plaintiff's harms and losses are ongoing so long as Defendant does not modify its policies and procedures and provide fully accessible facilities for Plaintiff and other persons with mobility disabilities.

82. Plaintiff has no adequate remedy at law to compensate her for the loss of opportunity to enjoy the amenities for which she pays and therefore seek. Accordingly, Plaintiff alleges that a prohibitory or mandatory injunction is necessary to assure that Defendant CCA complies with the applicable requirements of the Rehab Act.

WHEREFORE, Plaintiff requests relief as outlined below.

THIRD CLAIM

**As to Defendants California College of the Arts, Smartspace and Latitude 38 Only
(Violation of the Fair Housing Amendments Act,
42 U.S.C. § 3601 *et seq.*)**

83. Based on the facts and allegations pled in this Complaint (which Plaintiff re-pleads and incorporates herein by reference), Plaintiff has been and continues to be discriminated against in the provision of housing by Defendants CCA, Smartspace and Latitude 38. The federal Fair Housing Amendments Act (FHA) makes it unlawful for a housing provider “[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of that buyer or renter, a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or any person associated with that buyer or renter.” 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).

84. It is also unlawful under the FHAA “[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of that person; or a person residing in or intending to reside in that dwelling after it is sold or made available; or any person associated with that person.” 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).

85. Discrimination under the FHAA includes “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be

1 necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C. §
2 3604(3)(B); 24 C.F.R. § 100.204(a).

3 86. Discrimination under the FHAA also includes “[f]ailing or delaying maintenance or
4 repairs of sale or rental dwellings because of ...handicap.” 24 C.F.R. § 100.65(b)(2).

5 87. Defendants, and each of them, are a multifamily housing provider subject to the
6 FHAA.

7 88. Plaintiff is a qualified individual with a disability within the meaning of FHAA.

8 89. Defendants’ actions and omissions discriminate against Plaintiff solely because of
9 her disability in violation of the FHAA. Defendant’s discriminatory conduct includes but is not
10 limited to:

- 11 a. Failing to make their premises accessible to and usable by tenants with
12 disabilities;
- 13 b. Failing to comply with construction standard for disability access under
14 42 USC 3604(f)(3)(C)l;
- 15 c. (as to CCA only) Failing to grant reasonable accommodation requests;
16 and
- 17 d. (as to CCA only) Failing to implement lawful reasonable
18 accommodation policies.

19 Defendants violations of the FHAA are ongoing. Defendants, and each of them, have harmed and
20 will continue to harm Plaintiff in the future.

21 90. Because Defendants’ discriminatory and wrongful conduct is ongoing, Plaintiff is
22 in imminent harm of further injury. Injunctive relief is an appropriate remedy.

23 91. Defendants’ stubborn refusal to grant reasonable accommodation requests and
24 refusal to make the premises accessible to and useable by people with disabilities such as Plaintiff
25 demonstrates a knowing and conscious disregard for the law in general and the rights of disabled
26 tenants in particular. Such conduct justifies an award of punitive and exemplary damages in
27 addition to all other relief sought.

28 92. As a result of Defendants’ discriminatory acts and omissions, Plaintiff suffered

1 actual harms and losses including but not limited to physical injuries and physical degradation,
2 embarrassment and emotional distress.

3 WHEREFORE, Plaintiff requests relief as outlined below.
4

5 **FOURTH CLAIM**
6 **Against Defendants California College of the Arts, Smartspace and Latitude 38 Only**
7 **(Violation of the Fair Employment and Housing Act,**
8 **Cal. Government Code § 12900 *et seq.*)**

9 93. Based on the facts and allegations pled in this Complaint (which Plaintiff re-pleads
10 and incorporates herein by reference), Plaintiff has been and continues to be discriminated against
11 in the provision of housing by Defendants CCA, Smartspace and Latitude 38. The California Fair
12 Employment and Housing Act (FEHA) makes it unlawful to “otherwise make unavailable or deny
13 a dwelling based on discrimination because of...disability.” Cal. Gov’t Code § 12955(k).

14 94. FEHA further provides that it is unlawful “[f]or any person subject to the
15 provisions of the [Unruh Civil Rights Act] section 51 of the Civil Code ... to discriminate against
16 any person” on any basis protected under FEHA. Cal. Gov’t Code § 12955(d).

17 95. FEHA further provides that “[i]t is an unlawful practice...for a person to deny or to
18 aid, incite, or conspire in the denial of the rights created by Section 51...” Cal. Gov’t Code §
19 12948.

20 96. Defendants CCA, Smartspace and Latitude 38 provide multifamily housing subject
21 to FEHA.

22 97. Plaintiff is an individual with a disability within the meaning of FEHA.

23 98. The actions and omissions of Defendants CCA, Smartspace and Latitude 38
24 discriminate against Plaintiff solely because of her disability in violation of FEHA. Defendants’
discriminatory conduct includes but is not limited to:

- 25 a. Failing to make their premises accessible to and usable by tenants with
26 disabilities;
27 b. Failing to design and construct accessible housing in violation of California.
28 Government Code section 12955.1; and

- 1 c. (as to Defendant CCA only) Failing to grant reasonable accommodation
- 2 requests;
- 3 d. (as to Defendant CCA only) Failing to implement lawful reasonable
- 4 accommodation policies.

5 Defendants' violations of FEHA have harmed and will continue to harm Plaintiff in the future.

6 99. The stubborn refusal of Defendants CCA, Smartspace and Latitude 38 to provide
7 disabled tenants with accessible housing demonstrates a knowing and conscious disregard for the
8 law in general and the rights of disabled tenants in particular. Such conduct justifies an award of,
9 punitive and exemplary damages in addition to all other relief sought.

10 100. As a result of Defendants' acts and omissions, Plaintiff suffered actual harms and
11 losses including but not limited to physical injuries and physical pain, degradation, embarrassment
12 and emotional distress.

13 101. Plaintiff's harms and losses are ongoing so long as Defendants, and each of them,
14 do not modify their policies and procedures. Plaintiff has no adequate remedy at law to
15 compensate her for the loss of opportunity to enjoy the amenities for which she pays and therefore
16 injunctive relief is an appropriate remedy.

17 WHEREFORE, Plaintiff requests relief as outlined below.

18

19 **FIFTH CLAIM**
20 **Against All Defendants**
21 **(Violation of the Disabled Persons Act,**
22 **California Civil Code Sections 54 and 54.1)**

23 102. Based on the facts and allegations pled in this Complaint (which Plaintiff re-
24 pleads and incorporates herein by reference), Plaintiff alleges that Defendants have discriminated
25 against Plaintiff and violated Plaintiff's rights under sections 54 and 54.1 of the California Civil
26 Code. At all times relevant to this Action, California Civil Code sections 54 and 54.1 have
27 provided that physically disabled persons are not to be discriminated against because of their
28 physical disabilities and that they shall have full and equal use of public facilities and other
public places.

1 103. Section 54(a) of the California Civil Code states that individuals with disabilities
2 or medical conditions have the same right as the general public to the full and free use of the
3 streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals,
4 clinics and physicians' offices, public facilities and other public places.

5 104. Plaintiff is an individual with a disability as defined in California Government
6 Code section 12926. Defendants, and each of them, are public accommodations within the
7 meaning of the DPA.

8 105. California Civil Code section 54.1 (a)(1) provides, in pertinent part:

9 54.1(a)(1) Individuals with disabilities shall be entitled to full and equal
10 access, as other members of the general public, to accommodations,
11 advantages, facilities, ... places of public accommodation, amusement, or
12 resort, and other places to which the general public is invited, subject only
13 to the conditions and limitations established by law, or state or federal
14 regulation, and applicable alike to all persons.

15 106. California Health & Safety Code section 19955 provides, in pertinent part:

16 The purpose of this part is to ensure that public accommodations or facilities
17 constructed in this state with private funds adhere to the provisions of
18 Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the
19 Government Code. For the purposes of this part 'public accommodation or
20 facilities' means a building, structure, facility, complex or improved area
21 which is used by the general public... When sanitary facilities are made
22 available for the public, clients or employees in such accommodations or
23 facilities they shall be made available for the handicapped.

24 107. California Health & Safety Code section 19956 provides, in pertinent part: "All
25 public accommodations constructed in this state shall conform to the provisions of Chapter 7
(commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code."

26 108. California Health & Safety Code section 19956 became operative on July 1, 1970
27 and is applicable to all public accommodations constructed or altered after that date.

28 109. Plaintiff is informed and believes and based thereon alleges, that CCA's,
29 Smartspace's and Latitude 38's facilities were constructed and/or have been substantially altered
or modified after July 1, 1970.

30 110. Pursuant to the authority delegated by Government Code section 4450, *et seq.*, the
31 California State Architect promulgated regulations for the enforcement of the aforementioned
32 provisions of the Health & Safety Code and the Government Code. Since July 1, 1970, the State

1 Architect has developed and modified building regulations as set forth in the California Building
 2 Code and its antecedents.

3 111. Plaintiff is informed and believes, and based thereon alleges, that construction,
 4 alterations, remodeling and/or renovations have been conducted at the premises since July 1,
 5 1970. The construction, alterations, remodeling and/or renovations were conducted in violation
 6 of the above provisions of California law and the CBC.

7 112. A violation of the above referenced sections of the Health & Safety Code and the
 8 Title 24 regulations adopted thereunder constitutes a violation of the general anti-discrimination
 9 provisions Civil Code sections 54 and 54.1.

10 113. Each violation of the Americans with Disabilities Act of 1990 also constitutes a
 11 violation of sections 54(c) and 54.1(d) of the California Civil Code, thus independently justifying
 12 an award of damages and injunctive relief pursuant to California law. Plaintiff alleges that she
 13 has been denied such full and equal access as required by California law which incorporates Title
 14 III of the ADA, by all Defendants, and each of them.

15 114. Section 54.3 of the California Civil Code provides that any person, firm or
 16 corporation that denies or interferes with the admittance to or enjoyment of the public facilities
 17 as specified in sections 54 or 54.1 thereof or who otherwise interferes with the rights of an
 18 individual with a disability under sections 54 or 54.1 shall be liable for each such offense for the
 19 actual damages, and up to three times actual damages, but in no case less than \$1,000, and such
 20 attorneys' fees as may be determined by the Court.

21 115. These violations of Plaintiff's rights as alleged have resulted in the denial to
 22 Plaintiff of full and equal access to California College of the Arts, to its housing, to the shuttle
 23 service and the goods and services offered, and have caused Plaintiff to suffer the damage and
 24 harms set forth and alleged in this Complaint.

25 116. In addition, as to Defendants CCA, Smartspace and Latitude 38 only, the student
 26 housing at CCA is a housing accommodation within the meaning of Civil Code section 54.1(b)(2).

27 117. Based upon the foregoing, Defendants CCA, Smartspace and Latitude 38, and each
 28 of them, have violated their obligation to provide full and equal access to housing under the DPA

1 as follows:

- 2 a. Failure to maintain their housing in compliance with accessibility standards in
3 effect at the time of construction (CBC Section 1106A.1);
4 b. Failure and refusal to maintain their accessible features;
5 c. Failing to make their premises accessible to and usable by tenants with
6 disabilities;
7 (As to Defendant CCA only) Failing to grant reasonable accommodation
8 requests; and
9 d. (As to Defendant CCA only) Failing to implement lawful reasonable
accommodation policies.

10 118. Plaintiff alleges that these discriminatory acts and omissions were intentional for
11 the reasons stated above. The physical barriers to access complained of herein as well as the
12 failures to adopt and modify policies and procedures are patent barriers to people with mobility
13 disabilities and are of an obvious and intuitive nature and demonstrate an intent to deny
14 Plaintiff's rights. Parties which own and/or operate commercial facilities are familiar with the
15 requirements for the provision of accessible features and policies, for use by people with
16 disabilities and are aware that such matters are governed by the ADA. Defendants intentionally
17 allowed the barriers complained of herein to remain at the Store and its facilities and failed to
18 adopt or modify policies and procedures to provide access to Plaintiff and persons similarly
19 situated. Plaintiff's damages resulted from Defendants' intentional acts and omissions.

20 WHEREFORE, Plaintiff prays for damages and relief as hereinafter stated.

21

22 **SIXTH CLAIM**
Against All Defendants
(For Violation of the Unruh Act, Section 51 of the California Civil Code)

23 24 119. At all times relevant to this action, section 51 of the California Civil Code has
25 provided that physically disabled persons are not to be discriminated against because of their
26 physical disabilities. Based on the facts and allegations pled in this Complaint (which Plaintiff
27 re-pleads and incorporates herein by reference), Plaintiff alleges that Defendants, and each of
28 them, have discriminated against Plaintiff and violated Plaintiff's rights under section 51 of the

1 California Civil Code.

2 120. Plaintiff is a person with a disability as defined by section 12926 of the California
3 Government Code. Defendants, and each of them, are a business establishment as defined in the
4 Unruh Act.

5 121. California Civil Code section 51(b) provides, in pertinent part:

6 (b) All persons within the jurisdiction of this state are free and equal, and no
7 matter what their sex, race, color, religion, ancestry, national origin, disability, or
8 medical condition are entitled to the full and equal accommodations, advantages,
facilities, privileges, or services in all business establishments of every kind
whatsoever

9 122. California Civil Code section 52(a) provides as follows:

10 (a) Whoever denies, aids or incites a denial, or makes any discrimination or
distinction contrary to Section 51, 51.5, or 51.6, is liable for each and every offense
for the actual damages, and any amount that may be determined by a jury, or a
court sitting without a jury, up to a maximum of three times the amount of actual
damage but in no case less than four thousand dollars (\$4,000), and any attorney's
fees that may be determined by the court in addition thereto, suffered by any person
denied the rights provided in Sections 51, 51.5, or 51.6.

11 123. Each violation of the Americans with Disabilities Act of 1990 also constitutes a
violation of section 51(f) of the California Civil Code, thus independently justifying an award of
damages and injunctive relief pursuant to California law. Plaintiff alleges that she has been
denied such full and equal access as required by California law which incorporates Title III of
the ADA.

12 124. In addition, Defendants CCA, Smartspace and Latitude 38, and each of them, are
also a business establishment in their operation of student housing under the Unruh Act because
they are a housing accommodation that provides goods, services and facilities in exchange for
money.

13 125. As a business establishment that provides housing, the discriminatory conduct of
Defendants CCA, Smartspace and Latitude 38 includes but is not limited to:

- 14 a. Failing to make their student housing accessible to and usable by tenants with
disabilities;
- 15 b. (As to Defendant CCA only) Failing to grant reasonable accommodation

1 requests; and

2 c. (As to Defendant CCA only) Failing to implement lawful reasonable
3 accommodation policies.

4 126. Plaintiff alleges that these discriminatory acts and omissions were intentional for
5 the reasons stated above. The physical barriers to access complained of herein as well as the
6 failures to adopt and modify policies and procedures are patent barriers to people with mobility
7 disabilities and are of an obvious and intuitive nature and demonstrate an intent to deny
8 Plaintiff's rights. Parties which own and/or operate commercial facilities are familiar with the
9 requirements for the provision of accessible features and policies, for use by people with
10 disabilities and are aware that such matters are governed by the ADA. Defendants intentionally
11 allowed the barriers complained of herein to remain at the CCA campus and their facilities and
12 failed to adopt or modify policies and procedures to provide access to Plaintiff and persons
13 similarly situated. Plaintiff's damages resulted from Defendants' intentional acts and omissions,
14 and each of them.

15 WHEREFORE, Plaintiff prays for damages and relief as hereinafter stated.

16

17 **PRAAYER FOR RELIEF**

18 A. For injunctive relief pursuant to the ADA, 42 U.S.C. section 12188, the Rehab Act,
19 29 US.C. section 794, and the Unruh Act, section 52 of the California Civil Code. Plaintiff
20 requests that this Court enjoin Defendants from continuing to do business prior to removing all
21 architectural and policy barriers and otherwise complying with the federal and State
22 antidiscrimination laws or in the alternative, that this Court issue a mandatory injunction requiring
23 Defendants immediately to:

- 24 a. Remove all access barriers in common areas and public space in compliance with
25 the standards set forth in the ADAAG, ADAS, UFAS and the CBC;
26 b. Remove all access barriers in housing in compliance with the standards set forth in
27 the UFAS and CBC;

- c. Provide accessible transportation to include proper equipment, maintenance, and trained personnel;

d. Implement lawful reasonable accommodation policies and procedures.

Plaintiff does not request any injunctive relief pursuant to section 55 of the California Civil Code or section 19953 of the California Health & Safety Code.

B. For actual damages pursuant to The Rehab Act, The Fair Housing Act, The Fair Employment and Housing Act, and California Civil Code sections 52, 54.3, 3281 and 3333;

C. For a trebling of actual damages, but in no event less than \$4,000 in damages pursuant to California Civil Code section 52 for each and every violation of California Civil Code section 51;

D. In the alternative to the damages pursuant to California Civil Code section 52 in Paragraph B above, for a trebling of actual damages, but in no event less than \$1,000 in damages pursuant to California Civil Code section 54.3 for each and every violation of California Civil Code section 54.1 and/or California Civil Code section 54;

E. For attorneys' fees and costs pursuant to the ADA, The Rehab Act, The Fair Housing Act, The Fair Employment and Housing Act, California Civil Code §52, California Civil Code §54.3, and California Code of Civil Procedure §1021.5; and

F. For such other further relief as the Court deems proper.

Date: February 10, 2020

DERBY, McGUINNESS & GOLDSMITH, LLP

/s/Celia McGuinness
By CELIA MCGUINNESS, Esq.
Attorneys for Plaintiff
JILLIAN CROCHET

DEMAND FOR JURY

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

1 Date: February 10, 20200

DERBY, McGUINNESS & GOLDSMITH, LLP

2 /s/Celia McGuinness
3 By CELIA McGUINNESS, Esq.
4 Attorneys for Plaintiff
JILLIAN CROCHET

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